

FILED

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF OKLAHOMA

APR 03 2007

DAVID P. OGDEN,)
Plaintiff,)
v.)
MICHAEL J. ASTRUE,)
Commissioner of Social)
Security Administration,)
Defendant.)

WILLIAM B. GUTHRIE
Clerk, U.S. District Court
By: _____ Deputy Clerk

Case No. CIV-06-049-KEW

OPINION AND ORDER

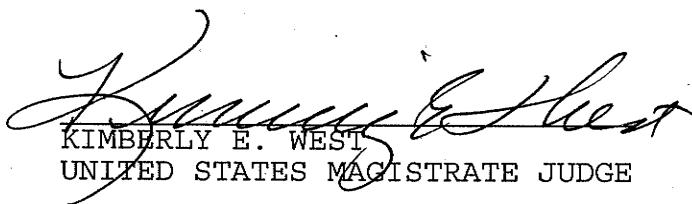
This matter comes before the Court on Plaintiff's Motion to Alter or Amend Order filed January 22, 2007 (Docket Entry #26). By Order entered January 18, 2007, this Court awarded Plaintiff's counsel EAJA fees in the amount of \$7,486.50, over Defendant's objection. Plaintiff's counsel now seeks the timely amendment of that Order to reflect an additional award of \$966.00 for additional legal services "incurred in the fee litigation process instigated by Defendant." Presumably, this statement references the necessity for the preparation of a reply to Defendant's response to the original Application. Plaintiff's counsel had requested compensation for the preparation of the reply within that document. Defendant responds, in essence, that counsel has received enough compensation and any additional fees should be sought in a second EAJA application.

Compensation is permitted for the time required to prepare an EAJA fee application. See Kelly v. Bowen, 862 F.2d 1333, 1334-35 (8th Cir. 1988). Necessarily, when the Commissioner opposes the request which requires a claimant to file a reply that does not

merely reproduce the same arguments raised in the application, the time expended in the reply's preparation is compensable. The requirement of a second application would merely cause Plaintiff's counsel to expend further time and incur still more fees, for which she would undoubtedly seek compensation. This process would be fruitless. Accordingly, the amount awarded in this Court's prior Order will be amended to reflect the addition of \$966.00, which this Court specifically finds represents a reasonable request.

IT IS THEREFORE ORDERED that Plaintiff's Motion to Alter or Amend Order filed January 22, 2007 (Docket Entry #26) is hereby **GRANTED**. Consequently this Court's Order of January 18, 2007 is **AMENDED** to reflect an award of fees to Plaintiff's counsel in the total amount of \$8,452.50. As reflected in that prior Order, payment shall be made to Plaintiff and should Plaintiff's counsel ultimately be awarded attorney's fees pursuant to 42 U.S.C. § 407(b)(1), she shall refund the smaller amount to Plaintiff. Weakley v. Bowen, 803 F.2d 575, 580 (10th Cir. 1986).

IT IS SO ORDERED this 3rd day of April, 2007.



KIMBERLY E. WEST
UNITED STATES MAGISTRATE JUDGE